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EB

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/282,857	03/31/99	KIMLER	J 33432

HM12/0830
JOHN W. HOGAN
AMERICAN HOME PRODUCTS CORPORATION
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EXAMINER

LEVY, N

ART UNIT	PAPER NUMBER
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1616

3

DATE MAILED:

08/30/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

09

Application No.

232857

Applicant(s)

777 LER

Examiner

NEIC 604

Group Art Unit

16/6

3

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

3

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

8/30/99

- ☒ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-20 is/are pending in the application.
- ☐ Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-20 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 2
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Art Unit: 1616

- (1) Receipt is acknowledged of IDS of 8/30/99.
- (2) Abstract should be: "Abstract of The Disclosure"
- (3) The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14, 16-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

"Low" is indefinite. It is unclear if inhibitor is a film former. Examiner is not familiar with chlorfenapur. Please provide structure.

- (5) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (6) (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (7) (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.
- (8) Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Martin et al.

5496845.

Art Unit: 1616

See col. 1-4 for low level surfactant, Table 1, the instant compound, water carrier and silicate abrasives at the instant levels. Solids/abrasives are the same.

(9) Claims 1-8, 16,17,19,20 are rejected under 35 U.S.C. 102(b) as being anticipated by lovell 5187184.

Sprayable arylpyrroles, those of Martin above, and the instant insecticide used in instant methods (col 1, lines 50-line 53, col 2) at instant levels of insecticide, silicate or clay carriers and abrasives, and low level surfactant (col. 2, lines 22-24) are disclosed. For control of beetles (col. 6) when applied to parous substrates, (rops)

(10) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

(11) Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaaf et al EP 0821876 or Martin et al 5496845 in view of McLeod GB 2314774 and Knight et al WO 94/434~~X~~

(12) Schaaf (compositions 1, 31) or Martin (see above) discloses the instant inventive composition, suitable for application, at the instant concentrations except for use of Liquid instead of solids as carriers. McLeod, (p.1,2,6) however, teaches the instant elements, silica equivalent to the instant abrasive but lacking in solid carriers in a similar format of both the instantly claimed invention and Schaaf and Martin, for control of cockroach (p.1).

Art Unit: 1616

(13) Knight further show ants and cockroaches (p.13) are controlled with an insecticide and abrasive/silicate carrier.

(14) It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize cockroach composition to use one of Macleod/knight, modified with chlorfengpyr to provide acceptable application. Schaaf teaches one having ordinary skill in the art would be motivated to perform this modification in order to provide sprayable compositions.

(15) Further, no criticality, or objective showing of nonobvious or unexpected results has been prosated by the applicant to distinguish over the prior art.

(16) The selection of each ingredient is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredient to optimize the effects desired.

(17) There is no unusual and/or unexpected results obtained since the prior art is well aware of the use of specific Abrasives, Surfactant, toxicant and other adjuvant common to the art of insect control and the use ingredients for the functionality for which they are known to be used is not a basis for patentability.

(18) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy, whose telephone number is (703) -308-2412. The examiner can normally be reached on Tuesday-Friday from 7 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) -308-4628. The fax phone number for the organization where this application or proceeding is assigned is (703) -305-3592.

Application/Control Number: 09/282,857

Page 5

Art Unit: 1616

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) -308-1235.

Levy/LR

August 23, 2000

A handwritten signature in black ink, appearing to read "Neil S. Levy", with a stylized flourish at the end.

NEIL S. LEVY
PRIMARY EXAMINER